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Supreme Court of the United States

October Term, 1979

No. 79-294

CREDE CALHOUN,
Petitioner,

vs.

THE SUPREME COURT OF OHIO
and
THE JUSTICES THEREOF,
Respondents.

PETITION FOR WRIT OF CERTIORARI
To the Supreme Court of Ohio

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JURISDICTIONAL STATEMENT

Crede Calhoun appeals from the final judgment of the Supreme Court of Ohio dated April 26, 1979, dismissing an action he and The Cuyahoga County Bar Association brought against the Supreme Court of Ohio and its Justices and which involved their stewardship, as Trustees, of a million dollar Trust Fund. By refusing to disqualify themselves, the Justices of the Supreme Court of Ohio held that they, as Judges, can sit in judgment of an action involving the legality of their conduct as Trustees of this Fund, without violating Petitioner's rights to due process of law guaranteed under the First Section of the Fourteenth Amendment of the Constitution of the United States.

OPINIONS BELOW

The judgment and opinion below are set forth verbatim:

"This cause originated in this Court on the filing of a Complaint for a writ of mandamus and was considered in the manner proscribed by law. On consideration thereof, it is ordered by the Court that the Motion to Dismiss be sustained and cause dismissed."

JURISDICTION

The judgment of the Supreme Court dismissing the mandamus action of Petitioner and the Bar Association was rendered on April 26, 1979. Their Motion For Rehearing was denied on May 25, 1979. The jurisdiction of the Supreme Court is invoked under 28 U.S.C., Section 1257(3).

QUESTIONS PRESENTED

1. Whether Petitioner's rights to due process under Section One of the Fourteenth Amendment of the United States Constitution were violated by the conduct of the Justices of the Supreme Court, in refusing to disqualify themselves in an action in which they are parties and in which they have a substantial financial interest.

2. Whether Petitioner's rights to due process under Section One of the Fourteenth Amendment of the United States Constitution are violated by the refusal of the Supreme Court of Ohio to require the Court of Appeals to rule on the substantial questions of federal and state law raised on appeal including the corresponding failure of the trial court in the same respect.

CONSTITUTIONAL PROVISIONS AND RULES

Section One, Fourteenth Amendment, United States Constitution

"* * * Nor shall any state deprive any person of property without due process of law. * * *"

Ohio Appellate Rule 12(A)

"* * * All errors assigned and briefed shall be passed upon by the court in writing, stating the reasons for the court's decision as to each such error."

Code of Judicial Conduct, Canon 3(C)

"C. Disqualification

(1) A judge should disqualify himself in a proceeding in which his impartiality might reasonably be questioned, including but not limited to instances where:

(a) he has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding;

* * * * *

(c) he knows that he, individually or as a fiduciary, or his spouse or minor child residing in his household, has a financial interest in the subject matter in controversy or in a party to the proceeding, or any other interest that could be substantially affected by the outcome of the proceeding;

(d) he or his spouse, or a person within the third degree of relationship to either of them, or the spouse of such a person:

(i) is a party to the proceeding, or an officer, director, or trustee of a party. * * *"

RAISING A FEDERAL QUESTION

The federal question was raised below by Amici, American Civil Liberties Union of Cleveland, Inc., pursuant to leave granted by the Ohio Supreme Court on April 5, 1979, to file a brief Amicus Curiae. At page 4 of this brief, Amici asserted that the principle of Rule 12(A) "embodies the fundamental principle of due process under the Fourteenth Amendment of the United States Constitution that a tribunal of any type must fully and fairly decide the issues presented to it." At page 6 of its brief, Amici asserted that "the right to an impartial decision maker is fundamental to the guarantee of due process."

STATEMENT OF THE CASE

On February 9, 1979, Petitioner Crede Calhoun together with The Cuyahoga County Bar Association, as Relators, filed an original action in Mandamus in the Supreme Court of Ohio against Robert Holmes and two other Judges of the Tenth Appellate District of Ohio, as Respondents, with Frank D. Celebrezze and the other Justices of the Ohio Supreme Court joined as necessary party Respondents.

In substance the mandamus complaint averred:

(1) The establishment, by court rule, of the Office of Disciplinary Counsel to be financed by requiring all attorneys, as a condition of practicing law in Ohio, to pay a biennial fee of $50.00;

(2) The circumstances of an action for declaratory judgment brought by Relators in the Common Pleas Court of Franklin County, Ohio, against Respondents, asking for an adjudication of the rights, privileges and obligations of

Respondents and Relators with reference to the asserted claim of Respondents of the inherent power to raise and spend public funds for the purpose of disciplining lawyers and policing the unauthorized practice of law without accountability to anyone; i.e., free from any requirements of public disclosure, accounting and audit and free from any of the safeguards provided by the Ohio Constitution and Statutes to insure the proper and legal expenditure of public funds and conduct of public office;

(3) While discovery proceedings were in process and interrogatories to Respondent Justices unanswered, a Motion for Judgment on the Pleadings was granted by the Common Pleas Judge, which judgment was appealed to the Court of Appeals for the Tenth District of Ohio;

(4) In the Court of Appeals, Relators assigned and briefed numerous errors which the court failed and refused to pass upon, including the granting of judgment by the trial court:

(a) Refusing discovery;

(b) Refusing to declare what rights the Plaintiffs might have under any set of facts provable under the Complaint;

(c) Refusing to declare whether there are any constitutional, statutory or other legal limits imposed upon Defendants in raising and holding and expending such funds, including the obligations of public disclosure, accounting and audit;

(d) Refusing to declare whether the Justices could, in dealing with the unauthorized practice of law by laymen, exercise an unlimited and uncontrolled right to expend whatever funds and to employ any number of personnel for such purposes.

The Complaint requested that Respondent Justices disqualify themselves, appointing seven judges of the Court of Appeals, chosen by lot, to sit in their place and prayed for a writ directing the Court of Appeals' judges to comply with their mandated duty to decide the questions presented.

On March 9, 1979, the Respondent Supreme Court Justices undertook to file in the court over which they preside, their Motion to Dismiss, arguing that there was "nothing in the complaint" which could support a finding that they had a duty, much less a definite, specific and absolute duty to disqualify themselves. Respondents further argued, to themselves, that Relators had a plain and adequate remedy by way of appeal to the Supreme Court which the court subsequently refused to allow.

Respondents' Motion to Dismiss was answered by brief of Relators setting forth the numerous violations of the Code of Judicial Conduct and pointing out that the granting of relief prayed for in the mandamus action could result in the discovery of misappropriations and misapplications of the Trust Fund under the stewardship of the Justices. This brief also pointed out there is no effective right of appeal from the Court of Appeals to the Supreme Court of Ohio, and that the only remedy was the right to petition the Supreme Court to certify the judgment of the Court of Appeals for its consideration.

After the filing by the American Civil Liberties Union of Cleveland, Inc. of their brief raising the federal questions herein asserted, the Supreme Court on April 26, 1979, entered the judgment appealed with no statement of reasons and with no report of its action.

On May 4, 1979, Relators filed a Motion for Rehearing, pointing out the obligation of the Supreme Court of Ohio

under Article IV, Section 3(C) of the Constitution of Ohio providing:

> "The decision in all cases in the Supreme Court shall be reported, together with the reasons therefor."

On May 8, 1979, by letter of their counsel to the Clerk of the Supreme Court, Respondents advised that they were waiving their right to file a memorandum in opposition to Relators' Motion for Rehearing. On May 25, 1979, the Supreme Court denied rehearing.

THE QUESTION IS SUBSTANTIAL

The recent trend in which the highest court in a state assumes the inherent power to raise and spend public funds to finance the discipline of attorneys and, in Ohio, the regulation of the unauthorized practice of law, can be expected to spread to other states. If there are constitutional and legal limits to the amount, manner and purposes for which courts can raise and administer such funds, no practical procedure exists to establish and enforce these limits, if the Trustees of these funds can avoid a due process determination of the legality and propriety of their stewardship simply by virtue of the position which they occupy in the hierarchy of judicial administration.

Throughout this entire controversy, the Respondents have refused to acknowledge that in the raising, holding and disbursement of these funds they act not as judges or in a judicial capacity but as administrators.

The present appeal involves the conduct of the Ohio Supreme Court Justices in judicially confirming the *undisputed* evasion by the lower courts of their duty to delineate the obligations of the Justices, including the lower court's

duty to permit discovery of the facts as to the handling by the Justices of this fund of over a million dollars. Petitioner, and other Ohio attorneys, who are subject to assessment as a condition of their continued right to practice their profession as attorneys in Ohio, are denied due process when the assessors assume the ultimate power to themselves determine the legality of their own conduct.

The concept that judges can raise and spend public funds without accountability to anyone is an appealing concept to men who do not question their own goodness and integrity and desire efficient administration unimpeded by any of the fundamental and basic requirements imposed upon public officers in a Democracy in the raising and expenditure of public funds. The view that their administrative powers can be protected from any erosion, as a practical matter, because in their adjudicative capacity they can ignore basic and fundamental principles of procedure, the Code of Judicial Conduct and due process will not be lost on the judges of the highest courts of other states.

The failure of this Court to stop this growing trend for more "efficient judicial administration" of attorney discipline procedures could be compared in its effect with the action of parents giving unlimited charge privileges at the local candy store to their overweight, diabetic and gluttonous child.

CONCLUSION

For the foregoing reasons, the Court should note the probable jurisdiction of this appeal.

Respectfully submitted,

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August 20, 1979

APPENDIX

ORDER OF THE SUPREME COURT OF OHIO DENYING MOTION FOR REHEARING

(Dated May 25, 1979)

No. 79-177

THE SUPREME COURT OF THE STATE OF OHIO
THE STATE OF OHIO,
CITY OF COLUMBUS.

CREDE CALHOUN, *et al.*,
Relators,

vs.

ROBERT E. HOLMES, Judge, *et al.*,
Respondents.

REHEARING

It is ordered by the court that rehearing in this case is denied.

ORDER OF THE SUPREME COURT OF OHIO DISMISSING THE CASE

(Dated April 26, 1979)

No. 79-177

THE SUPREME COURT OF THE STATE OF OHIO
THE STATE OF OHIO,
CITY OF COLUMBUS.

CREDE CALHOUN, *et al.*,
Relators,

vs.

ROBERT E. HOLMES, Judge, Tenth Appellate District, *et al.*,
Respondents.

IN MANDAMUS ON MOTION TO DISMISS

This cause originated in this court on the filing of a complaint for a writ of mandamus and was considered in the manner prescribed by law. On consideration thereof, it is ordered by the court that the motion to dismiss be sustained and cause dismissed.

COMPLAINT IN MANDAMUS FILED IN THE SUPREME COURT OF OHIO

Case No. 79-177

IN THE SUPREME COURT OF OHIO

CREDE CALHOUN, and THE CUYAHOGA COUNTY BAR ASSOCIATION,
Relators,

vs.

ROBERT E. HOLMES, ARCHER E. REILLY, JOHN W. McCORMAC, Judges, Tenth Appellate District,
Respondents,

and

THE SUPREME COURT OF OHIO, FRANK D. CELEBREZZE, THOMAS M. HERBERT, RALPH LOCHER, A. WILLIAM SWEENEY, WILLIAM B. BROWN, PAUL W. BROWN, Justices of the Supreme Court of Ohio,

and

THOMAS L. STARTZMAN, Clerk,
The Supreme Court of Ohio,
Necessary Parties Respondents.

COMPLAINT IN MANDAMUS
JURISDICTION

1. This action is brought pursuant to Article IV, Section 2(B)(1)(b), vesting in the Supreme Court of Ohio original jurisdiction in Mandamus. Relators request a writ commanding respondent Appellate Court Judges to comply with the clear provisions of Appellate Rule 12(A), specif-

ically commanding that on an appeal from a judgment of the Common Pleas Court, said Judges pass upon all errors assigned and briefed, in writing, stating the reasons for the Court's decision.

FIRST COUNT

2. Relator, Crede Calhoun (hereinafter referred to as "Relator"), is a member of the Bar of the State of Ohio, having been duly admitted to such practice and licensed by the Supreme Court of Ohio.

3. Plaintiff, The Cuyahoga County Bar Association (hereinafter referred to as "Relator Association"), is a non-profit corporation organized under the laws of the State of Ohio.

4. Necessary party respondent, Frank D. Celebrezze, is the duly elected Chief Justice of the Supreme Court of Ohio. Necessary party respondents, Thomas M. Herbert, Ralph Locher, A. William Sweeney, William B. Brown and Paul W. Brown are duly elected Justices of the Supreme Court of Ohio. (The foregoing will hereinafter be referred to as "Supreme Court" or "Respondent Justices.")

5. Respondents Robert E. Holmes, Archer E. Reilly and John W. McCormac are the duly elected judges of the Tenth District Court of Appeals. (The foregoing will be hereinafter referred to as "Court of Appeals" or "Respondent Appellate Judges.")

6. Effective October 25, 1975, the Supreme Court adopted Rules For The Government Of The Bar, requiring all attorneys in Ohio to pay a fee of $50.00 biennially for the stated purpose of financing:

(a) the expenses of a new state agency to be established by said rules to be known as the Office of Disciplinary Counsel, including the compensation of Disciplinary Counsel and Assistant Disciplinary Counsel to be appointed to Respondent Justices, and to include the compensation of other personnel employed and the expenses in providing office facilities, furnishings, stationery, equipment and office supplies.

(b) financing the expenses, including reasonable attorney's fees, of Bar Associations successfully prosecuting actions for the unauthorized practice of law.

7. Relators filed an action in the Federal Courts asserting that said Rules For The Government Of The Bar were beyond the power of the Supreme Court under the Ohio Constitution and violated federal constitutional rights of Relators. In said action, the Federal Courts refused to and did not consider any questions of state law involving the power of Respondent Justices under the Ohio Constitution, including the question whether it would be a violation of Relator's federal constitutional rights if it were determined in the state courts that the Supreme Court of Ohio had the inherent power to raise monies from attorneys, accumulate it, spend it and appoint public officers and employees free from any limitations or controls exercisable by the people of Ohio, the Legislature of Ohio or the Executive Departments of Ohio.

8. Thereafter, Relators, as plaintiffs, filed an action for a Declaratory Judgment under the provisions of Chapter 2721 against Respondents Supreme Court Justices and Respondent Startzman in the Common Pleas Court of Franklin County, seeking a declaration of the rights, liabilities, duties and obligations of Respondents and Relators under the circumstances.

9. In their complaint, Relators averred that Respondent Justices had raised approximately a million dollars,

and under said rules were attempting to exercise unlimited power to appoint public officers, to raise public revenues and appropriate same free from and not subject to any external controls and proscriptions provided in the Constitution and Statutes of Ohio in an attempt to confer upon themselves special privileges and immunities from public disclosure, accounting and audit and all other safeguards governing the raising and expenditures of public funds and appointment of public officers, in contravention of numerous provisions of the Ohio Constitution and Statutes of Ohio.

10. Respondents Supreme Court Justices first filed a motion requesting dismissal of said complaint on the ground that their actions were not subject to challenge or review in any court, and thereafter, when said motion was denied, filed their answer denying most of the averments of Relators' complaint including the averment that Respondents had raised a fund of approximately a million dollars.

11. Thereafter, and while discovery proceedings were in process including interrogatories by Relators to Respondent Justices which were unanswered, said Justices filed a motion under Ohio Civil Rule 12(C) for judgment on the pleadings on the ground that they were entitled to judgment as a matter of law on the undisputed facts appearing in the pleadings.

12. On March 2, 1978, the trial judge, Judge J. Craig Wright, filed a Judgment Entry in which the motion for judgment on the pleadings was adjudicated in the following language:

> "The motion of the defendants for judgment on the pleadings, for the reasons contained in the Opinion Of the Court which was read into the record on February 10, 1978, is sustained and final judgment is rendered in favor of the defendants."

13. In Judge Wright's Opinion given orally at the hearing on February 10, 1978, on the Supreme Court's motion, Judge Wright stated that the Clerk of the Supreme Court was not required to pay the funds collected into the State Treasury under the provisions of Ohio R.C. Sections 131.01 and 131.07 since if this were the case, the Court would have to find these Statutes invalid as in conflict with the inherent authority of the Supreme Court to promulgate rules and that to avoid this, it must be presumed that the Legislature was aware of the principles of separation of powers and did not intend to reach the funds presently being collected by the Supreme Court and decided no other issues of law or fact raised by the complaint and answer and declared no facts, rights, status or obligations of the parties.

14. Objections were duly filed with Judge Wright by Relators to the proposed judgment entry for the reason that the trial court did not consider all the facts, entered its judgment without a trial and the introduction of evidence on the disputed facts, did not declare the facts found and did not declare the rights and status of the parties with respect to each issue raised by the complaint, the defendant's answer and the requests for declaration of rights set forth in said complaint. These objections were ignored by the trial judge.

15. An appeal was duly perfected from said judgment by Relators to the Tenth Appellate District Court of Appeals, Franklin County, Ohio.

16. In said appeal, Relator Association assigned as error the following errors:

"1. The Court erred in attempting to dispose of this action, being an action for a declaratory judgment, by rendering a judgment on the pleadings.

2. The Court erred in attempting to incorporate in its judgment for a declaratory judgment 'reasons contained in the opinion of the Court' which reasons were nowhere filed in this cause and have not been recorded in or constitute a part of the judgment entry or of any entry of the Court.

3. The Court erred in undertaking to dispose of this action for a declaratory judgment by a judgment on the pleadings when there are important issues of fact between the parties, the determination of which requires consideration of substantial evidence which the plaintiffs were prevented from presenting.

4. The Court erred, when, at the time interrogatories addressed to the defendants were pending and unanswered, it gave notice to the parties of its decision to render judgment on the pleadings in favor of the defendants, and thereafter declined to require sufficient and proper answers to the pending interrogatories.

5. Numerous issues of law, in addition to issues of fact, are raised by the complaint and by the answer in this cause and constitute justiciable issues between the parties. By failing and refusing to find and to declare any one and each of the many principles of law determinative of such issues, the Court committed error.

Making of each such issue a separate and independent assignment of error herein, the appellants allege that the Court erred as follows:

(a) In failing and refusing to determine whether all funds referred to in the complaint, received by the defendants, are subject to the provisions of O.R.C. 131.01 and O.R.C. 131.07.

(b) In failing and refusing to determine whether a payment made by the plaintiff Calhoun, to the defendant Startzman, was received for the state of Ohio under O.R.C. 131.01 and was revenue of the state of Ohio under O.R.C. 131.07.

(c) In failing and refusing to determine whether the defendant Startzman, is a state officer within the meaning of O.R.C. 131.01 and whether said defendant is a collector and receiver of revenue of the state of Ohio under O.R.C. 131.07.

(d) In failing and refusing to determine whether the defendants and each of them, are entitled to a special immunity from public disclosure, accounting and audit except such as said defendants may choose to permit.

(e) In failing and refusing to determine whether the defendants, and each of them, have a special immunity and are exempted from requirements, in the expenditure of funds, set forth in Article II, Section 22 of the Constitution of Ohio.

(f) In failing and refusing to determine whether or not, in the receipt and expenditure of funds referred to in the complaint are exempt from the principles embodied in Article I, Section 2 of the Constitution of Ohio.

(g) In failing and refusing to determine whether the privilege claimed by the defendants, and by each of them, from compulsory public disclosure, accounting

and audit, constitutes a special privilege and immunity to which the defendants are entitled, or in violation of Article I, Sections 2 and 20 of the Constitution of Ohio.

(h) In failing and refusing to determine whether or not power has been delegated by the people of Ohio under the Constitution of Ohio to the defendant to levy, impose or assess by any rule, an imposition or financial obligation upon any individual or group of individuals for the purpose of raising revenue to generate funds to be used in the exercise of police power by said defendants.

(i) In failing and refusing to determine whether or not expenses deemed necessary by the defendants in carrying out the policy powers executed by them constitute expenses of the state of Ohio.

(j) In failing and refusing to determine whether or not expenses incurred by the defendants in providing office facilities, furnishings, equipment, supplies and personnel in connection with the exercise by said defendants of their police power in the regulation of the practice of law, constitute expenses or debts of the state of Ohio.

(k) In failing and refusing to determine whether expenses incurred by the defendants in the exercise of the police power assumed by said defendants to exist in relation to conduct of individuals not members of the Bar, alleged to constitute the unauthorized practice of law, constitute expenses or debts of the state of Ohio.

(l) In failing and refusing to determine whether the defendants may impose upon the individual plaintiff and all members of the Bar of the state of Ohio, a

payment of an alleged fee for the purpose of providing funds to the defendants in the exercise by said defendants of an assumed authority to deal with the conduct of individuals not members of the Bar of the state of Ohio alleged to constitute unauthorized practice of law.

(m) In failing and refusing to determine whether power has been delegated by the people of Ohio in the Constitution of Ohio to the defendants to enact any rule requiring the payment of funds for public revenues or appropriating such funds to defray expenses of the state.

(n) In failing and refusing to determine whether or not the defendants, in the exercise of police power relating to the regulation of the practice of law or assumed by them to exist, in dealing with conduct allegedly constituting the unauthorized practice of law by a layman, includes an unlimited and uncontrolled right to expend whatever sums, and to employ an unlimited number of personnel, for such purposes.

(o) In failing and refusing to determine whether, although all funds received under color of office by public officers, constitute public monies within the meaning of O.R.C. 117.10, nevertheless, all funds received by the defendants and referred to in the compiaint herein, do not constitute public monies within the meaning of chapter 135 of the Ohio Revised Code."

17. In said appeal Relator Calhoun assigned the following error:

"ASSIGNMENT OF ERROR NO. 1

The court committed prejudicial error in disposing of plaintiff's complaint for declaratory judgment by

granting defendant's motion for judgment on the pleadings, without permitting discovery and without declaring what rights plaintiffs' might have under any set of facts provable under the complaint. The trial court thereby:

(a) failed and refused to declare whether there are any constitutional, statutory or other legal limits imposed upon defendants in the raising, holding and expenditure of monies; the entering of contracts, the appointment of public officers, the employment of public servants and the fixing of their terms of office, hours and compensation;

(b) failed and refused to declare whether in the raising, holding and expenditure of monies defendants are free from all external fiscal controls including the obligations of public disclosure, accounting and audit;

(c) failed and refused to declare whether, if defedants have such unlimited powers, these powers have been delegated by the people of Ohio under the Constitution of Ohio or, if not delegated, whether such powers are beyond the power of the people to retain;

(d) failed and refused to declare any other rights or obligations on the part of plaintiffs or defendants which might have been raised by the evidence."

18. In their briefs filed with the Court of Appeals, Relator Association warned the Appellate Court that the failure of the trial court to declare the rights of the parties made it impossible, on such appeal, to argue the existence of errors in the trial court's disposition of important legal issues which the trial court had, in fact, not decided; and Relator Calhoun asked that the Appellate Court not evade and ignore the issues and questions raised by the circumstances of this case by the publication of a decision addressing only those issues which the court could answer.

19. In oral argument before the Court of Appeals on October 2, 1978, the failure of the trial judge to delineate all of the rights of the parties was emphasized by counsel for Relator and counsel for Relator Association.

20. On October 26, 1978, the Court of Appeals published its decision, and on October 27, 1978, filed its Judgment Entry affirming the trial court's judgment without modification. In its decision and Judgment Entry, the Court of Appeals evaded and refused to pass on all but a few of the Assignments of Error specifically assigned and briefed by Relators. Instead, the Court of Appeals chose to answer only the first and third Assignments of Error and separate assignments 5(a), 5(b) and 5(c) filed by Relator Association. The Assignment of Error of Relator Calhoun was ignored.

21. In said decision and Judgment Entry the Court of Appeals failed and refused to pass upon the remaining errors assigned and briefed by Relators including among others:

(a) The failure of the trial court to determine and declare the facts and legal rights of the parties with reference to the numerous issues raised in the trial court;

(b) The failure of the trial court to declare whether there are any constitutional, statutory or other legal limits imposed upon the Supreme Court's powers, which are undefined and unknown because the trial court refused a trial and discovery;

(c) Whether Respondent Justices are entitled to a special immunity from all external fiscal controls including the obligations of public disclosure, accounting and audit except such as said Justices may choose to permit;

(d) Whether if the Supreme Court were free from compulsory public disclosure, accounting and audit, this constituted a special privilege and immunity in violation of Article I, Section 2 of the Constitution of Ohio;

(e) Whether the Supreme Court has the power to raise money by a levy on members of the Bar for the purpose of raising public revenue to be used in the exercise of the police power of the state;

(f) Whether the expenses incurred by defendants constituted expenses or debts of the State of Ohio;

(g) Whether the Supreme Court could raise, from members of the Bar of the State of Ohio, funds to be used in dealing with the unauthorized practice of law by laymen including an unlimited and uncontrolled right to expend whatever funds, and to employ an unlimited number of personnel, for such purposes; and

(h) Finally, whether if defendants have such unlimited powers, such powers are beyond the power of the people of Ohio to regulate.

22. The above errors were briefed in a main brief by Relator Association, encompassing twenty pages and a main brief and reply brief by Relator Calhoun encompassing fifty-one pages.

23. The Court of Appeals, by refusing and failing to pass on each Assignment of Error briefed and by failing to give its reasons for its decision as to each such error, violated the clear legal rights of Relators and the specific command of Appellate Rule 12(A) that:

> "* * * Errors not specifically pointed out in the record and separately argued by brief may be disregarded. All errors assigned and briefed shall be passed upon by the court in writing, stating the reasons for the court's decision as to each such error."

24. Within 10 days of the filing of said Judgment Entry, Relators filed a Motion For Compliance With Rule 12(A) Of The Rules Of Appellate Procedure and Application For Reconsideration, specifically pointing out the failure of the Respondent Appellate Judges to comply with the clear requirements of Appellate Rule 12(A) with respect to the Assignments of Error set forth in Paragraphs 16 and 17 herein and briefed as set forth in Paragraph 18 herein.

25. Within 10 days of the filing of said Judgment Entry on October 27, 1978, Relators filed a Motion For Extension Of Time To File A Brief In Support Of The Motion For Compliance and Application For Reconsideration requesting until November 20, 1978, to file a brief in support thereof.

26. On November 14, 1978, Respondent Appellate Judges denied said motion for an extension of time to file briefs and, since then, have failed to act or rule upon the Motion for Compliance or the Application for Reconsideration.

27. The violation by the Court of Appeals of Appellate Rule 12(A) deprives Relators of a remedy by due course of law, administered without denial of justice, guaranteed Relators under Article I, Section 16 of the Ohio Constitution, since, in an appeal to this court, this court has the discretion to refuse to hear Relators' appeal on the grounds that their appeal involves no questions arising under the Constitution of the United States or of this State and does not involve a case of public or great general interest, without giving any reasons for such denial. This will deny to Relators a decision by any court in Ohio of the numerous issues raised and not answered in the Common Pleas Court or the Court of Appeals, and, particularly, whether Respondent Judges are free from

compulsory public disclosure, accounting and audit of their handling of public funds, except such as they choose to permit and, if not, the specific requirements and other standards by which the legality of the Supreme Court's handling can be tested.

28. On November 27, 1978, Relators duly filed with the Court of Appeals their Notice of Appeal to this court from the judgment of the Court of Appeals.

29. Relators in order to be afforded an appeal and review by this court of the decision of the Court of Appeals, are required to demonstrate that their appeal involves questions arising under the Constitution of the United States or of this State or involves a case of public or great general interest. The violation by the Court of Appeals of Civil Rule 12(A) substantially and materially impedes any such showing and deprives Relators of an adequate remedy at law because, having been given no reasons for the Appellate Court's conclusion, Relators can only speculate as to what obstacles, legal or otherwise, need be overcome in an appeal to this court, and, for the further reason, that it precludes this court from determining whether there was any merit to the claims of prejudicial error presented to the Court of Appeals by the Assignments of Errors, which this court requires as a predicate for such appeal.

30. That Respondent Appellate Judges have a clear duty and obligation to comply with Rule 12(A). Such compliance is not discretionary and cannot be compelled by any process or procedure available to the Relators other than by the issuance of the writ prayed for.

WHEREFORE, Relator Crede Calhoun and Relator The Cuyahoga County Bar Association pray:

(1) That Respondent Justices of the Supreme Court disqualify themselves and that this action be determined by seven judges of the Courts of Appeals chosen by lot;

(2) That they be afforded oral argument of this action;

(3) For a Writ of Mandamus directing Respondents Robert E. Holmes, Archer E. Reilly and John W. McCormac to comply with Appellate Rule 12(A) by specifically passing upon, in writing, Relator Cuyhoga County Bar Association's Assignments of Error numbers 2, 4, 5, 5(d), 5(e), 5(f), 5(g), 5(h), 5(i), 5(j), 5(k), 5(l), 5(m), 5(n) and 5(o) and by passing upon Relator Calhoun's first Assignment of Error stating the reasons for the court's decision as to each such error;

(4) For such other relief, as may be appropriate, under the facts shown at the trial of this matter; and

(5) That Relators recover their costs herein.

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